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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,690	09/11/2000	Mark John Berry	PM271641	9282

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EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 07/30/2002

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,690

Applicant(s)

BERRY ET AL.

Examiner

EVERETT WHITE

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-10 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Amendment B filed May 21, 2002 has been received and entered into the record.
2. Claims 1 and 5-11 are pending in the case.
3. The text of those sections of title 35, U. S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. Claim 10 provides for the use of a polysaccharide conjugate in a method of targeting binding of a particle carrying perfume to cellulose, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 10 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

6. Claims 1 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent No. JP61155307 for the reasons already of record on page 4 of the Office action mailed February 21, 2002.

7. Applicant's arguments filed May 21, 2002 have been fully considered but they are not persuasive. Applicants amended Claim 1 to include the subject matter of Claim 4. However, Claim 1, as amended, is still anticipated by the Japanese patent because Claim 1 broadly claims that the polysaccharide may be selected as galactomannans. The tragacanth gum and arabic gum that are recited in the Japanese patent (see abstract) are well known galactomannan gums and falls within the meaning of the term "galactomannans" that set forth in instant Claim 1. The tragacanth gum and arabic gum also anticipates the subject matter of instant Claim 7 since the gums comprises galactose residues and therefore are susceptible to oxidation by galactose oxidase as set forth in instant Claim 7. The description in the Japanese patent of having an oil-containing powder or granule that comprises a hydrophobic-oil-containing silica, whereby the surface of the silica is coated with a water soluble polymer (which may be selected as tragacanth gum or arabic gum) falls within a particle that is physically linked to a polysaccharide as set forth in instant Claim 8. Accordingly, the rejection of Claim 1 along with Claims 6 and 7 under 35 U.S.C. 102(b) as being anticipated by Japanese Patent No. JP61155307 is maintained.

The Japanese patent further discloses that the oil containing powder or granule coated with a water soluble polymer can be used for detergents, cleanser, and baby powder which anticipates the fabric washing product and fabric conditioning product of instant Claims 8 and 9.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. JP61155307 in view of DeMasi et al (US Patent No. 4,453,979).

Applicants claim a polysaccharide conjugate comprising a polysaccharide attached to a particle carrying perfume, the polysaccharide conjugate being capable of binding to cellulose. See page 6, lines 23 and 24 of the instant specification wherein the particle may be attached to the polysaccharide by a range of physical or chemical means and line 26 of page 6 of the instant specification wherein silica particles may be used.

Japanese Patent No. JP61155307 discloses an oil containing powder or granule that comprises hydrophobic oil containing silica with a petal shape, in which the surface of the silica is coated with a water soluble polymer. The Japanese patent discloses that the oil may be selected as perfume oil and that the water soluble polymer is, e.g. natural polysaccharide and protein. Examples of the polysaccharides that are disclosed in the abstract of the Japanese patent include tragacanth gum and arabic gum (see abstract), which fall within the meaning of the term "galactomannans" which is set forth in instant Claim 1. The tragacanth gum and arabic gum also embraces the subject matter of

instant Claim 7 since the gums comprises galactose residues and therefore are susceptible to oxidation by galactose oxidase as set forth in instant Claim 7. The description in the Japanese patent of having an oil-containing powder or granule that comprises a hydrophobic-oil-containing silica, whereby the surface of the silica is coated with a water soluble polymer (which may be selected as tragacanth gum or arabic gum) falls within a particle that is physically linked to a polysaccharide as set forth in instant Claim 8. The Japanese patent further discloses that the oil containing powder or granule coated with a water soluble polymer can be used for detergents, cleanser, and baby powder which anticipates the fabric washing product and fabric conditioning product of instant Claims 8 and 9. The instant claims differ from the Japanese patent by further reciting polysaccharides that are not mentioned in the Japanese patent, such as the polysaccharides set forth in instant Claim 5.

The DeMasi et al patent shows that the substitution of tragacanth and arabic gums that are disclosed in the Japanese patent with other types of gums such as guar, locust bean, tara and cassia, which are set forth in instant Claim 5 is well known in the art (see column 2, 7th paragraph). One would be motivated to combine the teachings of the DeMasi et al patent with the Japanese patent since both patents use the polysaccharide gums thereof for similar utility. See column 1, 2nd paragraph of the DeMasi et al patent whereby the gums may be use in personal care products and the Japanese patent discloses the use of the gums in detergents, cleanser, and baby powder (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute tragacanth and arabic gums of the Japanese patent that are used to prepare the detergents, cleanser, or baby powder thereof with guar, cassia or tara gums in view of the recognition in the art, as evidenced by the DeMasi et al patent, that gums are effective for controlling functions such as thickeners, binders, stabilizers, protective colloids, suspending agents and rheology or flow controls of personal care products.

10. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Summary

11. Claims 1 and 5-10 are rejected; Claim 11 is objected to.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Examiner's Telephone Number, Fax Number, and Other Information

13. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at www.uspto.gov and click on the button "Patent Electronic Business Center" for more information.

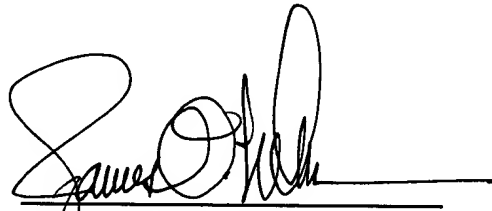
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter, can be reach on (703) 308-4532. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


E.White


JAMES O. WILSON
PRIMARY EXAMINER
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